

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTOPHER P.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C22-5951 RSM

ORDER REVERSING AND REMANDING DENIAL OF BENEFITS

Plaintiff seeks review of the denial of his application for Supplemental Security Income (“SSI”). Plaintiff contends the ALJ erred in evaluating his symptom testimony and medical opinion evidence. Dkt. 11. As discussed below, the Court **REVERSES** the Commissioner’s final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

BACKGROUND

Plaintiff is 45 years old, has at least a high school education, and has worked as a commercial cleaner. Admin. Record (“AR”) 29, 46–48. Plaintiff applied for SSI benefits on January 10, 2020, alleging a disability onset date of June 10, 2018. AR 77–78, 93. Plaintiff’s application was denied initially and on reconsideration. AR 88, 110. Administrative Law Judge (“ALJ”) Allan Erickson held a hearing on May 27, 2021, and issued a decision finding Plaintiff

1 not disabled on June 10, 2021. AR 16–34. In relevant part, the ALJ found Plaintiff had severe
2 impairments of degenerative disc disease, lumbar spine; venous insufficiency, left lower
3 extremity; post-traumatic stress disorder (PTSD); depression; and paranoid schizophrenia. AR
4 21. The ALJ found Plaintiff could perform light work, with additional postural, environmental,
5 cognitive, and social limitations. AR 24. The Appeals Council denied Plaintiff's request for
6 review, making the ALJ's decision the Commissioner's final decision. AR 4–9.

7 DISCUSSION

8 The Court may reverse the ALJ's decision only if it is legally erroneous or not supported
9 by substantial evidence of record. *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020). The Court
10 must examine the record but cannot reweigh the evidence or substitute its judgment for the
11 ALJ's. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When evidence is susceptible to
12 more than one interpretation, the Court must uphold the ALJ's interpretation if rational. *Ford*,
13 950 F.3d at 1154. Also, the Court "may not reverse an ALJ's decision on account of an error
14 that is harmless." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

15 1. Plaintiff's Testimony

16 At the hearing, Plaintiff testified to having back, leg, and feet pain. AR 148. He stated
17 he receives treatment and takes medication for his lower back and they sometimes help. AR 50.
18 He stated his legs and feet swell, and as a result, he is typically restricted to lying or sitting down,
19 and elevating his legs every two to three hours, three to four times a day. AR 49–50, 64. As for
20 his mental health, Plaintiff testified to having anxiety, depression, and paranoia. AR 53–55, 67.
21 He stated his anxiety attacks last for an hour and they occur every other day. AR 67. He stated
22 he often thinks people are making fun of him and has problems with anger. AR 64–65. He
23 explained that because of his mental health, he has difficulties socializing with others and

1 managing self-care. AR 66–68. Plaintiff explained he is able to drive, but not for long periods
 2 of time. AR 50–51. He stated he can go to the store to run errands if needed, but tries to avoid
 3 doing so because being around others make him nervous. AR 62–63. He explained his sister
 4 and children help him with house chores. AR 57.

5 Where, as here, an ALJ determines a claimant has presented objective medical evidence
 6 establishing underlying impairments that could cause the symptoms alleged, and there is no
 7 affirmative evidence of malingering, the ALJ can only discount the claimant’s testimony as to
 8 symptom severity by providing “specific, clear, and convincing” reasons supported by
 9 substantial evidence. *Trevizo*, 871 F.3d at 678. “The standard isn’t whether our court is
 10 convinced, but instead whether the ALJ’s rationale is clear enough that it has the power to
 11 convince.” *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022).

12 Here, the ALJ rejected Plaintiff’s testimony regarding his back pain based on his
 13 conservative treatment protocol. AR 25–26. In doing so, the ALJ cites to evidence which show
 14 Plaintiff’s treatment was limited to medication, his main complaints concerned his leg, and he
 15 was continuously found negative for back pain. *See* AR 303–22, 513–19, 425, 530–51. An ALJ
 16 may discount the claimant’s testimony when the ““level or frequency of treatment is inconsistent
 17 with the level of complaints.”” *Molina*, 674 F.3d at 1113. Given that Plaintiff’s record indicates
 18 his back pain was sufficiently controlled by medication and his main concerns revolved around
 19 his leg pain, the ALJ could reasonably reject this portion of Plaintiff’s testimony and thus did not
 20 err in doing so.

21 The ALJ, however, erred in rejecting the rest of Plaintiff’s testimony. In rejecting
 22 Plaintiff’s testimony regarding his leg pain, the ALJ pointed to Plaintiff’s treatment records after
 23 undergoing radiofrequency ablation. AR 26 (citing AR 611–26). “When objective medical

1 evidence in the record is *inconsistent* with the claimant's subjective testimony, the ALJ may
 2 indeed weigh [the medical evidence] as undercutting such testimony." *Smartt*, 53 F.4th at 498.
 3 But as further discussed in the following section, the records show Plaintiff still experienced pain
 4 after the procedure and was advised to continue wearing compression socks and elevating his
 5 legs, supporting Plaintiff's testimony.

6 In rejecting Plaintiff's testimony regarding his mental health symptoms, the ALJ
 7 similarly pointed to his counseling sessions, finding that they showed Plaintiff's symptoms were
 8 "generally stable" and improved from medication. AR 25–26. The ALJ focuses on Plaintiff's
 9 normal presentation during his appointments, yet the records also show Plaintiff had difficulties
 10 collecting his thoughts, answering questions, and was often depressed or anxious. *See* AR 379,
 11 476, 482, 485, 567. The records do show Plaintiff reported sleeping better and being less angry,
 12 but he also continued to report hallucinations. AR 591, 594. The ALJ's assessment of the record
 13 is not supported by substantial evidence, therefore in rejecting Plaintiff's testimony about his
 14 mental health symptoms, the ALJ erred.

15 The ALJ also rejected Plaintiff's testimony based on his inconsistent statements. AR 25.
 16 An ALJ may consider inconsistencies in a claimant's testimony or inconsistencies between a
 17 claimant's testimony and conduct when weighing credibility. *See Orn v. Astrue*, 495 F.3d 625,
 18 636 (9th Cir. 2007). Here, the ALJ pointed specifically to Plaintiff's ability to spend hours on
 19 the internet, perform household chores, fish, and receive help from his children. AR 25. But the
 20 ALJ does not explain how Plaintiff's ability to perform much of these activities contradicts
 21 Plaintiff's testimony regarding how he is limited to sitting or lying down most of the day. AR
 22 49–50. Plaintiff himself also testified to performing house chores, though with help from his
 23 family. AR 57. The ALJ also noted Plaintiff was inconsistent about his criminal history and

1 highlighted a portion of Plaintiff's mental evaluation where Plaintiff reported getting arrested
 2 twice, but his evaluator noted that Plaintiff was actually in prison four times. AR 377. However,
 3 the ALJ ignores the fact that the inconsistency may be due to Plaintiff's poor memory and
 4 possible impaired intellectual functioning, which the evaluator noted later in the evaluation. *See*
 5 AR 379 ("The examiner is concerned he may be functionally illiterate/or have borderline/mildly
 6 impaired intellectual functioning."). The ALJ also noted Plaintiff's statement that he thinks he is
 7 going blind in one eye is not supported by the record. AR 25, 497. Yet, there are treatment
 8 notes showing Plaintiff complained of blurred vision and was found positive for yellowing eyes.
 9 AR 303–09.

10 In sum, the ALJ partially erred in rejecting Plaintiff's testimony. The ALJ permissibly
 11 rejected the portion regarding his back pain because substantial evidence shows this symptom
 12 was managed with conservative treatment. However, in rejecting Plaintiff's testimony regarding
 13 his leg pain and mental health symptoms based on the objective medical evidence and Plaintiff's
 14 activities of daily living, the ALJ fell short of providing a rationale "clear enough that it has the
 15 power to convince." *See Smartt*, 53 F.4th at 499.

16 **2. Medical Opinion Evidence**

17 Laura Slee, ARNP, completed a questionnaire prepared by Plaintiff's counsel in April
 18 2021, and opined that because Plaintiff suffers from lower extremity pain, he should elevate his
 19 legs for 15 to 20 minutes, two to six times each day. AR 527. She further opined Plaintiff would
 20 need to recline for less than one hour during an eight-hour workday. AR 528.

21 For applications filed after March 27, 2017, such as Plaintiff's, ALJs must consider every
 22 medical opinion in the record and evaluate each opinion's persuasiveness, with the two most
 23 important factors being "supportability" and "consistency." *Woods v. Kijakazi*, 32 F.4th 785,

1 791 (9th Cir. 2022); 20 C.F.R. § 416.920c(a). Supportability concerns how a medical source
 2 supports a medical opinion with relevant evidence, while consistency concerns how a medical
 3 opinion is consistent with other evidence from medical and nonmedical sources. *See id.*; 20
 4 C.F.R. § 416.920c(c)(1), (c)(2). Under the new regulations, “an ALJ cannot reject an . . . opinion
 5 as unsupported or inconsistent without providing an explanation supported by substantial
 6 evidence.” *Woods*, 32 F.4th at 792.

7 The ALJ rejected Ms. Slee’s opinion for its inconsistency with the objective medical
 8 evidence.¹ *See* AR 28. The Court considered the ALJ’s discussion of the medical evidence
 9 regarding Plaintiff’s physical health throughout his decision, but found the ALJ’s reasoning
 10 lacking as the medical evidence, when taken as a whole, does not substantially negate Ms. Slee’s
 11 opinion. The ALJ pointed to Plaintiff’s treatment record from his primary care providers,
 12 describing them as “generally benign,” yet the ALJ does not explain how these treatment notes,
 13 much of which primarily concern Plaintiff’s back, are inconsistent with the leg and feet
 14 limitations opined by Ms. Slee. AR 25 (citing AR 511–26, 530–51). The evidence the ALJ
 15 relied on also include Plaintiff’s follow-up treatment notes after undergoing radiofrequency
 16 ablation of the veins in his left leg in September 2020. *See* AR 611–15. The ALJ focuses on
 17 Plaintiff’s vascular examinations, which show he continuously had no erythema, no ankle
 18 edema, or calf tenderness after the procedure. *See id.* However, the treatment notes also show
 19 that four weeks after the procedure, Plaintiff was told to return if his condition did not improve.
 20 AR 614. Plaintiff returned and reported experiencing “some relief” but noted residual pain. AR
 21

22 ¹ The ALJ also rejected Ms. Slee’s opinion because it was “unsupported” by the evidence. AR 28. The
 23 “consistency” factor requires the ALJ weigh a medical opinion based on its consistency with evidence from other
 medical sources, while the “supportability” is based on how a medical opinion is supported by the same medical
 source who provided the opinion. *See* §§ 20 C.F.R. 416.921c(c)(1), (2). Here, the ALJ rejected Ms. Slee’s opinion
 by comparing it to other evidence in the record, therefore the Court construes the ALJ’s evaluation as one that is
 based on the “consistency” factor rather than the “supportability” factor.

1 613. Plaintiff was encouraged to continue using compression therapy, exercise, and leg
 2 elevation. *Id.* Plaintiff returned again in April 2021, was assessed as having leg varicosity with
 3 pain and edema, and instructed to continue with compression stockings and leg elevation. AR
 4 612–13. Overall, the evidence the ALJ cites to do not substantially undermine Ms. Slee’s
 5 opinion that due to Plaintiff’s lower extremity pain, he must elevate his legs multiple times a day.
 6 *See* AR 527. Therefore, in rejecting Ms. Slee’s opinion for its inconsistency with objective
 7 medical evidence, the ALJ erred.

8 The ALJ also rejected Ms. Slee’s opinion for its inconsistency with Plaintiff’s
 9 “demonstrated functioning,” but the ALJ’s reasoning falls short here as well. *See* AR 28. The
 10 ALJ points to Plaintiff’s ability to manage his self-care and perform household chores, but does
 11 not explain how they contradict Ms. Slee’s opinion. It is entirely possible for Plaintiff’s ability
 12 to perform these activities of daily living, while simultaneously needing to elevate his legs
 13 throughout the day.

14 **C. Remand for Further Proceedings**

15 Plaintiff requests the Court to remand for an award of benefits, or alternatively to remand
 16 for a *de novo* hearing. Dkt. 11 at 7. Remand for an award of benefits “is a rare and prophylactic
 17 exception to the well-established ordinary remand rule.” *Leon v. Berryhill*, 880 F.3d 1041, 1044
 18 (9th Cir. 2017). The Ninth Circuit has established a three-step framework for deciding whether a
 19 case may be remanded for an award of benefits. *Id.* at 1045. First, the Court must determine
 20 whether the ALJ has failed to provide legally sufficient reasons for rejecting evidence. *Id.*
 21 (citing *Garrison*, 759 F.3d at 1020). Second, the Court must determine “whether the record has
 22 been fully developed, whether there are outstanding issues that must be resolved before a
 23 determination of disability can be made, and whether further administrative proceedings would

1 be useful.” *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1101 (9th Cir. 2014)
2 (internal citations and quotation marks omitted). If the first two steps are satisfied, the Court
3 must determine whether, “if the improperly discredited evidence were credited as true, the ALJ
4 would be required to find the claimant disabled on remand.” *Garrison*, 759 F.3d at 1020. “Even
5 if [the Court] reach[es] the third step and credits [the improperly rejected evidence] as true, it is
6 within the court’s discretion either to make a direct award of benefits or to remand for further
7 proceedings.” *Leon*, 880 F.3d at 1045 (citing *Treichler*, 773 F.3d at 1101).

8 The Court has found that the ALJ erred in rejecting portions of Plaintiff’s testimony and
9 the medical opinion evidence, satisfying the first step. However, the Court cannot say further
10 administrative proceedings would not be useful considering the medical opinions of state agency
11 medical consultants Dr. Alto and Dr. Staley conflict with Ms. Slee’s. *See* AR 83–85, 100–04.
12 “The ALJ is responsible for determining credibility, resolving conflicts in medical testimony,
13 and for resolving ambiguities.” *Garrison v. Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014) (quoting
14 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)). Accordingly, the Court finds
15 remanding for further proceeding the more appropriate remedy in this case.

16 CONCLUSION

17 For the foregoing reasons, the Commissioner’s final decision is **REVERSED** and this
18 case is **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. §
19 405(g). On remand, the ALJ should re-evaluate Plaintiff’s testimony regarding his leg pain and
20 mental health symptoms, and the medical opinion evidence.

21 DATED this 12th day of May, 2023.

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RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE